

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACTState/Territory: HAWAII**LIENS AND ADJUSTMENTS OR RECOVERIES**

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and returned home:
 - a) Send notification to inform recipients in nursing facilities that the State intends to determine if the individual can reasonably be expected to be discharged from the facility and return home for the purpose of placing a lien on the recipient's home property. The notice will include an explanation of liens and that the lien will not effect the individual's ownership of the property.
 - b) The individual or the individual's representative will be given an opportunity to self-certify that the stay in the institution is expected to be permanent or not.
 - c) If the individual does not indicate the stay in the institution is likely to be permanent, the State will make an assessment based on an evaluation of the individual's medical condition and the social-economic factors involved in caring for the individual in the home. The recipient will be determined permanently institutionalized for the purposes of lien placement by such evaluation made by a physician and a socialworker, or if the recipient has been continuously authorized to receive institutional care or has been institutionalized for six months or longer with no discharge plan.
 - d) The notice will contain information regarding the right to an administrative hearing if they disagree with the State's determination, and the process to file for a hearing.
2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

The son or daughter provided the following or insured that the following care was provided:

 - a) Access to medical services by transporting the individual, scheduling appointments, or calling for emergency services.
 - b) Medical care such as administration of medication, changing of dressing, etc.
 - c) Basic daily needs such as feeding, bathing, cleaning, supervision.
 - d) Financial support to meet the parents need for food, shelter and clothing.

TN No. 96-007

Supersedes

TN No. 94-013Approval Date OCT 1 1996Effective Date FEB 01 1996

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- e) Other services that contributed to the emotional well being of the parent.

3. The State defines the following terms as follows:

- a) **estate:** shall mean the real and personal property included in an estate under the State's probate law and any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest). This includes assets conveyed to a survivor, heir, or assign of the deceased through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangements.
- b) **individual's home:** shall mean the property that the individual resided and had an equity interest in prior to becoming medically institutionalized.
- c) **equity interest in the home:** shall mean the value of the property that the individual holds legal title to beyond the amount owed on it in mortgages and liens.
- d) **residing in the home for at least one or two years on a continuous basis** shall mean continuously lived in the home as the sole residence.
- e) **lawfully residing** shall mean permitted by law to live in.

TN No. 96-007
Supersedes
TN No. 94-013

Approval Date OCT 11 1996 Effective Date FEB 01 1996

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4. **The State defines hardship as follows:**

Undue hardship exists if the family and heirs of the deceased recipient do not have income greater than the Federal Poverty Level, and the estate of the deceased recipient is providing the sole source of income to meet their basic living expenses, or the estate is their sole place of residence.

5. **The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost effective:**

- a) Recovery will not be made if estate subject to recovery is the sole income producing asset of the family and heirs of the recipient, and is a family farm or business that does not produce income greater than the Federal Poverty Limit for the number of family or heirs solely dependent on the income from the asset.
- b) The estate is a home of modest value (based on the median sale price of homes obtained by the Honolulu Board of Realtors) and the family members and heirs meet the following conditions:
 - i) Resided in the home at least three months prior to the admission of the owner to a medical institution and provided care that delayed the admission.
 - ii) Have continuously resided in the home since the admission of the recipient to the medical institution.
 - iii) Do not have an interest in real property other than the home of the recipient.
 - iv) Have income not greater than the Federal Poverty Level.
- c) The State will determine cost effectiveness of recovery based on the amount to be recovered, the value of the assets from which recovery will be made, and the administrative and related costs to make the recovery.

6. **The State defines cost effective as follows (include methodology/thresholds used to determine cost effectiveness):**

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If a contractor is performing the recovery work, it is cost effective if the amount of the recovery is sufficient to yield a contingency fee payment to the contractor which exceeds its cost to recover the asset. If the State is performing the recovery, it is cost effective if the amount of the recovery exceeds the administrative costs, legal fees, travel expenses and other cost factors that may be involved.

7. The State uses the following collection procedures (includes specific elements contained in the advance notice requirement, the method for applying the waiver, hearing and appeals procedures, and time frames involved):

- a) Notify the family and heirs that the State shall seek to recover Medicaid payments from the estate of the deceased recipient 45 days prior to initiating collection activities. The notice will specify the amount to be recovered, the requirements for waiving recovery due to undue hardship, and the appeal rights and procedures.
- b) The family and heirs shall file for a waiver of recovery within 30 days of the mailing of the recovery notification on a form designated by the State with the State agency or private contractor designated by the State.
- c) Family and heirs must submit documentation of their finances and other requested information to support their request for waiver within 10 days of the request from the State unless there are circumstances beyond their control.
- d) Family and heirs may appeal the denial of waiver by requesting an administrative hearing within 90 days of the waiver denial.

TN No. 96-007
Supersedes
TN No. 94-013

Approval Date

OCT 1 1996

Effective Date

FEB 01 1996